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No. 10, Original

In the Supreme Court of the United States

OCTOBER TERM, 1947

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY, DEFENDANTS

MOTION TO ENTER INTERLOCUTORY DECREE; MEMORANDUM IN SUPPORT OF MOTION AND DECREE

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MOTION TO ENTER INTERLOCUTORY DECREE

The United States of America, by its Attorney General and its Solicitor General, moves the Court to enter an interlocutory decree quieting in the United States title to the 640 acres of public land in controversy, in accordance with the terms of the proposed interlocutory decree submitted herewith.

TOM C. CLARK,
Attorney General.
PHILIP B. PERLMAN,
Solicitor General.

JANUARY, 1948.

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MEMORANDUM IN SUPPORT OF MOTION

1. This is an original action in which the United States sought to establish its title to 640 acres of public land in Wyoming, contained in a section 36, and to recover for the oil extracted by The Ohio Oil Company.

2. On June 2, 1947, the Court rendered its decision, holding that the United States was the owner of the 640 acres in controversy (331 U. S. 440). The Court recommitted the case to the Special Master for further proceedings with respect to the Government's demand for a money judgment on account of the oil extracted from the land during the period of the defendants' possession (331 U. S. 440, 461).

3. On June 26, 1947, the defendants filed a petition for rehearing. On October 13, 1947, the Court denied the petition for rehearing.

4. Since the plaintiff is the owner of the land it is entitled to a formal decree establishing its title of record, without awaiting the final disposition of the issues recommitted to the Special Master. The entry of such a decree would immediately clear the record title and would be a convenience and an aid to the United States in its management of the land under the Mineral Leasing Act. Also, such a decree would permit the Government's lessees and their assignees to

settle their transfers of interests in Government leases covering the property. For example, we have been informed that in 1944 one of the Government's lessees sold its interest in a lease covering 240 acres of the section (W½NE¼, SE¼) for $478,000 on condition that the consideration be paid when the purchaser's attorneys approved the title. The assignment of the interest in the lease was approved by the Secretary of the Interior and the purchaser has gone into possession and is producing in substantial quantities from the deep zone. However, the purchaser's attorneys have refused to approve the title until the Government's title is established of record by formal decree.

Respectfully submitted.

TOM C. CLARK,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

JANUARY, 1948.

INTERLOCUTORY DECREE

This cause came on to be heard on the exceptions of the parties to the report of the Special Master and was briefed and argued by counsel. Pursuant to the decision of this Court rendered June 2, 1947 (331 U. S. 440), it is hereby ordered, adjudged and decreed as follows:

1. The United States is now and at all times herein material has been the owner in fee and entitled to the possession of Section 36 of Township 58, North of Range 100, West of the Sixth Principal Meridian, located in Park County, Wyoming.

2. The defendants have no right, title or interest in or to said land or any part thereof.

3. The defendants are hereby perpetually enjoined from asserting any right, title or interest to said land or any part thereof.

4. Jurisdiction of this cause is retained by the Court for the purpose of making such other and further orders and decrees as may be necessary.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 10, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,

Defendants

RESPONSE AND OPPOSITION TO MOTION TO ENTER INTERLOCUTORY DECREE

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 10, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,

Defendants

RESPONSE AND OPPOSITION TO MOTION TO ENTER INTERLOCUTORY DECREE

In response to the plaintiff's Motion To Enter Interlocutory Decree, defendants oppose same for the following reasons:

1. The proposed action is contrary to this Court's order of April 25, 1945 (325 U. S. 833).

2. The proposed action is contrary to this Court's decision of June 2, 1947 (331 U. S. 440, 461), wherein this case was recommitted to the Special Master for further proceedings with respect to the plaintiff's demand for money judgment on account of oil extracted from the land in question.

3. No useful purpose would be served by entering an interlocutory decree.

4. No sufficient reasons have been assigned that warrant this Court in departing from the procedure already established by it in this case.

MEMORANDUM IN SUPPORT OF DEFENDANTS' RESPONSE AND OPPOSITION

On April 25, 1945 (325 U. S. 833), this Court appointed Nat U. Brown, Esquire, Special Master to hear this case, with instructions to submit to the court his findings of fact and conclusions of law, together with a draft of a decree recommended by him. Said Special Master carried out this Court's directions and has submitted a proposed final decree. This Court, however, recommitted the case to the Special Master (331 U. S. 440, 461) for his further consideration of the Government's demand for a money judgment on account of oil extracted from the land in controversy. A hearing on said accounting issue has been set by the Special Master for March 1, 1948, at Cheyenne, Wyoming, and it can be expected that in due course said master will make additional findings of fact and conclusions of law and again submit same to this Court, together with a final decree recommended by him. This Court can then at one hearing determine all remaining issues in this case and enter one decree which will dispose of the entire case. No necessity appears for departing from such procedure by entering the proposed interlocutory decree.

In the first three paragraphs of plaintiff's Memorandum In Support Of Motion, only formal matters of record have been referred to. Defendants do not believe that these references support the motion but, on the contrary, that they are inconsistent with the entering of an interlocutory decree. Only in the fourth paragraph of plaintiff's memorandum is any attempt made by plaintiff to show reasons for the entry of an interlocutory decree. These reasons are that the entry of such a decree (1) would immediately

clear the record title and would be a convenience and an aid to the United States in its management of the land under the Mineral Leasing Act; and (2) would permit Government lessees and their assignees to settle their transfers of interests in Government leases covering a part of the land here in question.

With respect to the first of such assigned reasons, defendants contend that the entry of an interlocutory decree would not clear the record title. Jurisdiction will remain in the Court over every issue after the entry thereof and until the entry of a final decree which must necessarily dispose of each and every issue involved in the cause. Such interlocutory decree would not be a convenience or an aid to the United States in the management of the land under the Mineral Leasing Act because, for all practical purposes, the management of such land under the Mineral Leasing Act is already determined and provided for in a written contract, entitled the "Elk Basin Unit Agreement," approved by the Acting Secretary of the Interior on May 29, 1946, in accordance with the provisions of the Mineral Leasing Act, as amended, and designated "I-Sec. No. 439" by the Interior Department. Such unit agreement provides for the development and operation of the deeper horizons and deposits in the Elk Basin Field, including those under the land in controversy, those being the only horizons and deposits having any substantial value under such land.

Section 8 of said Agreement contains a provision to the effect that the royalties and net working interest proceeds allocable to such land shall be impounded pending final judicial determination of title. (See Appendix, page 6.) In Section C of the Certificate of Approval of said unit agreement, provision was made regarding the E½NE¼ of said Section (referred to therein as Tract XLIX). (See Appendix, page 7.) This 80-acre tract is the only part of said Section that has not already been leased by the United

States. In said Section C, it was provided that any lease which might be executed by the United States covering this 80-acre tract would be dated as of the effective date of the unit agreement and committed to said unit agreement. Ample provision was also made for the handling of investment costs and operating expenses, including provisions for the settlement of the share of production allocated to such 80-acre tract, retroactive to the effective date of said unit agreement. As the United States, through its lessees, is already in possession of all of said Section 36 with the exception of the E½NE¼, and, as to such 80-acre tract, the parties to such unit agreement, including the United States and its lessees, having made provision for the handling of their interests retroactive to the effective date of the unit agreement, there is no reason for the entry of an interlocutory decree herein. In fact, the unit agreement shows that it was contemplated by the parties, including the United States, that the entire matter would be held in status quo pending *final* determination of all issues with reference thereto.

With respect to the second reason assigned by the plaintiff (that such decree would assist the lessees and their assignees to settle their transfers of interest in the Government leases), defendants show that the entry of an interlocutory decree would not be final or conclusive for the reason that the Court is asked to retain jurisdiction over every issue until final determination is made of all issues. Consequently, there is no reason to assume or expect that the attorneys for the alleged purchasers would approve title on the basis of an interlocutory decree. Further, the said lessees and those who may have purchased from them were not made parties to this action. It its apparent that they bought with full knowledge of the title claims and existence of litigation, and it is improper for the plaintiff to ask this Court to depart from the procedure already

established by it and enter a decree at this time merely to aid purchasers or others who are not now before the Court.

WHEREFORE, the defendants herein respectfully request that no interlocutory decree be entered, and that the entry of any decree concerning title be deferred until the Court is in position to enter a final decree disposing of all issues involved in this case.

Respectfully submitted,

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The Ohio Oil Company.

January, 1948

APPENDIX

SECOND AND THIRD PARAGRAPHS OF SECTION 8 OF ELK BASIN UNIT AGREEMENT, PARK COUNTY, WYOMING, APPROVED BY THE ACTING SECRETARY OF THE INTERIOR, MAY 29, 1946, DESIGNATED I-SEC. NO. 439, BY THE DEPARTMENT OF INTERIOR.

"It is understood that there are conflicting title claimants to various tracts included in the Unit Area as indicated on the attached Exhibit "B". By joining in or approving this agreement no conflicting title claimant thereby concedes the validity of a claim adverse to his own, but each conflicting title claimant agrees that said tract shall be subject to all of the terms and provisions hereof, from the effective date of this agreement in the event or to the extent that any such controversy is determined in his or its favor. It is further understood that any provision of this agreement directly or indirectly referring to the Commissioner of Public Lands of the State of Wyoming or to the State of Wyoming as an owner of land shall become operative only in the event it should be finally determined judicially that title to Section 36, T. 58 N., R. 100 W., is in the State of Wyoming.

"Royalties and net working interest proceeds arising from production allocated to a tract, the title to which is in dispute, may, except as to royalties accruing to the United States, be impounded by the Operator without liability for interest pending the final determination or settlement of the title controversy. As to royalties accruing to the United States from tracts, the title to which is in dispute, such funds shall be deposited with the Register of the District Land Office to be held as unearned money pending final settlement of the title dispute and then applied as earned or returned in accordance with such final settlement without interest."

SUBDIVISION C OF APPROVAL—CERTIFICATION—DETERMINATION EXECUTED BY THE ACTING SECRETARY OF THE INTERIOR, MAY 29, 1946, BY WHICH SAID SECRETARY APPROVED AND MADE EFFECTIVE THE ELK BASIN UNIT AGREEMENT, PARK COUNTY, WYOMING, UNDER THE ACT OF CONGRESS, APPROVED FEBRUARY 25, 1920, AS AMENDED. (TRACT XLIX MENTIONED HEREIN IS THE E½NE¼ OF THE SECTION 36 INVOLVED IN THIS ACTION.)

"C. Agree that if the title to Tract numbered XXVI or Tract numbered XLIX, as described in Exhibit "B" attached to said Unit Agreement, or title to both of said tracts, shall be finally adjudicated to be vested in the United States in the contest or litigation relating thereto, the Secretary of the Interior will within ninety (90) days of such final determination or adjudication offer said tracts of land for oil and gas lease by competitive bidding in conformity with the law and regulations upon the express condition that the lessee of said tract or tracts shall fully commit the same, and make said tract or tracts subject in all respects, to the aforesaid Unit Agreement and to the Operating Agreement referred to in Section 12 of said Unit Agreement, and upon the further condition that the lessee shall within ninety (90) days after issuance of lease fully reimburse the Unit Operator for the share of investment costs and operating expenses allocated under said Operating Agreement to said tract or tracts of land, incurred from and after the effective date of unitization, without interest; provided, however, that the Unit Operator shall also make settlement with said lessee and the United States, as their interests shall appear, for the share of the production allocated to said tract or tracts, retroactive to the effective date of the Unit Agreement, and provided further that any lease or leases so issued by the United States shall be dated retroactive to the effective date of the Unit Agreement."